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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. PROMEVITUS WOODY, Defendant and Appellant.	B216760 (Los Angeles County Super. Ct. No. MA044888)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles A. Chung, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Promevitus Woody appeals from the judgment entered following a jury trial in which he was convicted of possession of a controlled substance, cocaine base (Health & Saf. Code, § 11350, subd. (a)), found to have suffered three prior convictions of serious or violent felonies within the meaning of the "Three Strikes" law (Pen. Code, §§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i)), and served four prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). Following a sanity hearing, appellant was found sane at the time of the commission of the offense. Appellant's *Romero*[1] motion was granted as to two of the prior strike convictions and he was sentenced to prison for eight years, consisting of the middle term of two years, doubled to four years by reason of one prior strike conviction, plus four years, one year for each of his four prior prison term enhancements.

Appellant's *Faretta*[2] motion was granted, and his pro. per. status remained. Standby counsel was appointed by the court.[3]

Appellant, thereafter, refused to enter a plea, stating "I demur." Finding good cause based on appellant's failure to enter a plea and to cooperate with the court's request, the trial court revoked appellant's pro. per. status and put the arraignment over to the following day.

The next day, the court explained the instant case was a refiling, that appellant had been pro. per., and that previously the court had revoked appellant's pro. per. status based on appellant's willful refusal to comply with the court's orders. Additionally, appellant had been engaging in untruthful or misleading conduct. The court indicated that in revoking appellant's pro. per. status the previous day, it was looking not only at his present conduct but also his conduct in the past. The court acknowledged that while a defendant may demur, it may not be done orally but must be in writing.

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1 *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

2 *Faretta v. California* (1975) 422 U.S. 806.

3 Appellant represented himself at the preliminary hearing.

Thereafter, appellant entered a plea of not guilty and not guilty by reason of insanity.

Appellant's motion, on the eve of trial, pursuant to Penal Code section 1538.5, was denied as untimely. Thereafter, defense counsel indicated there would be a stipulation that the search was lawful.

The court found a manifest need to utilize a stealth belt on appellant. The court noted appellant was verbally combative and highly agitated. The court warned appellant if he continued to act in a foolish and disrespectful manner, he would be excluded from the courtroom and the case would be tried without him. Appellant refused to acknowledge the court.[4]

The evidence at trial established that on April 26, 2008, at approximately 5:30 p.m., Los Angeles Deputy Sheriff Jason Howell was on patrol with his partner and observed appellant and three other men possessing and drinking alcohol in Courson Park in Los Angeles County. Deputy Howell searched appellant[5] and found a pipe used for smoking rock cocaine in appellant's back, left pocket and a piece of cocaine in base form[6] in a pack of cigarettes in his front, left pant pocket.

The court conducted a hearing pursuant to Evidence Code section 402 to determine the admissibility of testimony of defense witness Perry Butler, who claimed that Deputy Howell's partner planted evidence on Butler on another occasion, some time ago. The court concluded that such evidence was not relevant in that the deputy did not testify in this case, that it was Deputy Howell who searched appellant and found the

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4 Appellant referred to one juror as a "wizard" and another juror as a "moron." The court indicated appellant could not cause his own mistrial by acting out and setting up an appeal based on his own conduct, nor could he try to eliminate certain jurors by insulting them. The court indicated if the jurors could be fair, that was "great."

5 It was stipulated the search was a lawful search.

6 It was stipulated that the substance had a net weight of approximately .32 grams of a solid substance containing cocaine in base form and was a useable amount.

drugs on appellant. Pursuant to Evidence Code section 352, the court found there was very little probative value to the evidence and that it would consume an undue amount of time. Specifically, it would require another trial to determine whether Butler's allegations were correct.

In defense, appellant testified he was at Courson Park wandering around because he was having mental problems. He was lost trying to get "some kind of bearing." He talked to officers about his need for medical attention, and they took him to the hospital, where they said he was suicidal. "So they . . . took [him] to the county jail. After that [he came] back, . . . two, three days later or something and [he] now [has] a dope case." At the time he was in Courson Park, he was not in possession of any kind of illegal drugs. He did not have cigarettes or a glass pipe on him. In 2003, he was convicted of selling or transporting narcotics. He denied that in 2007, he was convicted of second degree burglary. He claimed he "pled to traveler's checks."

Outside the presence of the jury, the court noted appellant was interrupting the court again and that appellant was yelling loud enough that it felt concern for the jury's safety and defense counsel's safety. The court indicated it felt appellant might get physical with defense counsel based on appellant's demeanor and that appellant had now "absented himself from this courtroom." When the jury reentered the courtroom, the court instructed the jury to ignore the outburst and not hold it against appellant.

The next day, appellant indicated he did not want to wear his civilian clothing, claiming the clothes were not washed. The court advised appellant he was always welcome to stay in the courtroom and participate in the proceedings as long as he behaved.

Certified copies of records from the Department of Corrections were introduced into evidence pursuant to Penal Code section 969b showing appellant's prior convictions. The court found appellant was the individual named in the records and the jury found the prior convictions as alleged to be true.

At the sanity portion of the hearing, appellant testified on the day of his arrest he was suffering from a bipolar, schizophrenic disorder and a chemical imbalance.

Sometimes he does not know who he is or what he is doing. He has had this condition his entire life. He has cut himself and burned himself. On the day of his arrest, he did not know possession of cocaine was wrong. He was supposed to be taking Zaraquil and Depacol. He has had hospitalizations for psychiatric problems.

Counsel stipulated that on November 12, 2008, Dr. Kashal K. Sharma, M.D., a board certified forensic psychiatrist, interviewed appellant and opined appellant was legally sane at the time of his arrest. He also found appellant to be malingering. It was also stipulated that on January 12, 2009, board certified forensic psychiatrist Dr. Corey J. Knapke examined appellant and opined that, at the time appellant was arrested, he was legally sane. The doctor found evidence appellant was malingering.

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On December 8, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

SUZUKAWA, J.

We concur:

EPSTEIN, P.J. MANELLA, J.